

## National Credit Union Administration

## § 792.17

authorized official may make the initial determination. Referral of a request by the official to an employee will not affect the time limitation imposed in § 792.15 unless the request involves an unusual circumstance as provided in § 792.16.

[63 FR 14338, Mar. 25, 1998, as amended at 68 FR 61737, Oct. 30, 2003]

### § 792.15 How long will it take to process my request?

NCUA will respond to requests within 20 working days, except:

(a)(1) Where the running of such time is suspended while:

(i) The Information Center awaits additional information from the requester. A suspension of time for this purpose may occur only once during the processing period; and

(ii) The Information Center clarifies with the requester issues regarding the payment of fees pursuant to § 792.26.

(2) The Information Center's receipt of the requester's response to the request for additional information or clarification ends the tolling period;

(b) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B) and § 792.16, the time limit may be extended for:

(1) An additional 10 working days as provided by written notice to you, stating the reasons for the extension and the date on which a determination will be sent; or

(2) Such alternative time period as mutually agreed by you and the Information Office, when NCUA notifies you that the request cannot be processed in the specified time limit.

[63 FR 14338, Mar. 25, 1998, as amended at 73 FR 56938, Oct. 1, 2008]

### § 792.16 What unusual circumstances can delay NCUA's response?

(a) In unusual circumstances, the time limits for responding to your request (or your appeal) may be extended by NCUA. If NCUA extends the time, it will provide you with written notice setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. Our notice will not specify a date that would result in an extension for more than 10 working days, except as set forth in paragraph (c) of this section. The unusual circumstances that can

delay NCUA's response to your request are:

(1) The need to search for, and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which will be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of NCUA having a substantial interest in the subject matter.

(b) If you, or you and a group of others acting in concert, submit multiple requests that NCUA believes actually constitute a single request, which would otherwise satisfy the unusual circumstances criteria specified in this section, and the requests involve related matters, then NCUA may aggregate those requests and the provisions of § 792.15(b) will apply.

(c) If NCUA sends you an extension notice, it will also advise you that you can either limit the scope of your request so that it can be processed within the statutory time limit or agree to an alternative time frame for processing your request.

[63 FR 14338, Mar. 25, 1998, as amended at 73 FR 30478, May 28, 2008]

### § 792.17 What can I do if the time limit passes and I still have not received a response?

If NCUA does not comply with the time limits under § 792.15, or as extended under § 792.16, you do not have to pay search fees; requesters qualifying for free search fees will not have to pay duplication fees. You also can file suit against NCUA because you will be deemed to have exhausted your administrative remedies if NCUA fails to comply with the time limit provisions of this subpart. If NCUA can show that exceptional circumstances exist and that it is exercising due diligence in responding to your request, the court may retain jurisdiction and allow NCUA to complete its review of the

## § 792.18

## 12 CFR Ch. VII (1–1–09 Edition)

records. In determining whether exceptional circumstances exist, the court may consider your refusal to modify the scope of your request or arrange an alternative time frame for processing after being given the opportunity to do so by NCUA, when it notifies you of the existence of unusual circumstances as set forth in § 792.16.

[73 FR 56938, Oct. 1, 2008]

### EXPEDITED PROCESSING

#### § 792.18 What if my request is urgent and I cannot wait for the records?

You may request expedited processing of your request if you can show a compelling need for the records. In cases where your request for expedited processing is granted or if NCUA has determined to expedite the response, it will be processed as soon as practicable.

(a) To demonstrate a compelling need for expedited processing, you must provide a certified statement. The statement, certified by you to be true and correct to the best of your knowledge and belief, must demonstrate that:

(1) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) The requester is a representative of the news media, as defined in § 792.20, and there is urgency to inform the public concerning actual or alleged NCUA activity.

(b) In response to a request for expedited processing, the Information Center will notify you of the determination within ten working days of receipt of the request. If the Information Center denies your request for expedited processing, you may file an appeal pursuant to the procedures set forth in § 792.28, and NCUA will expeditiously respond to the appeal.

(c) The Information Center will normally process requests in the order they are received in the separate processing tracks. However, in NCUA's discretion, a particular request may be processed out of turn.

[63 FR 14338, Mar. 25, 1998, as amended at 73 FR 56938, Oct. 1, 2008]

### FEES

#### § 792.19 How does NCUA calculate the fees for processing my request?

We will charge you our allowable direct costs, unless they are less than the cost of billing you. Direct costs means those expenditures that NCUA actually incurs in searching for, duplicating and reviewing documents to respond to a FOIA request. Search means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer. Search does not include modification of an existing program or system that would significantly interfere with the operation of an automated information system. Review means examining documents to determine whether any portion should be withheld and preparing documents for disclosure. Fees are subject to change as costs increase. The current rate schedule is available on our web site at <http://www.ncua.gov>. We may contract with the private sector to locate, reproduce or disseminate records. NCUA will not contract out responsibilities that FOIA requires it to discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. The following labor and duplication rate calculations apply:

(a) NCUA will charge fees at the following rates for manual searches for and review of records:

(1) If search/review is done by clerical staff, the hourly rate for CU–5, plus 16% of that rate to cover benefits;

(2) If search/review is done by professional staff, the hourly rate for CU–13, plus 16% of that rate to cover benefits.

(b) NCUA will charge fees at the hourly rate for CU–13, plus 16% of that rate to cover benefits, plus the hourly cost of operating the computer for computer searches for records.

(c) NCUA will charge the following duplication fees:

(1) The per-page fee for paper copy reproduction of a document is \$.10;

(2) The fee for documents generated by computer is the hourly fee for the computer operator, plus the cost of materials (computer paper, tapes, labels, etc.);